REMARKS

Claims 1-61 are now pending. No claims have been cancelled. Claim 61 has been added. Support for new Claim 61 can be found in paragraph [0081] of the instant published patent application. Claims 1-2, 8-9, 12, 20-23, 26-31, 34, 38, 40, 45-47, 49, 51, and 57 have been amended. Support for the amendments to Claims 1, 20, 38, and claim 51 can be found at paragraphs [0051] and [0063] of the instant published patent application. Support for amendments to Claims 8, 26, and 45 can be found in paragraph [0035] of the instant published patent application. Support for amendments to Claims 34 can be found in paragraph [0081] of the instant published patent application. Support for the amendment to Claim 22 can be found in paragraph [0044] of the instant published patent application. Support for amendments to Claims 9, 27, and 46 can be found in paragraph [0048] of the instant published patent application. Support for the amendment to Claim 28 can be found in paragraph [0052] of the instant published patent application. Support for the amendment to Claim 31 can be found towards the end of paragraph [0051] of the instant published patent application. Support for the amendment to Claim 40 can be found in paragraphs [0036] and [0040] of the instant published patent application.

Applicants have carefully studied the outstanding Office Action. The present Response is intended to be fully responsive to all points of rejection raised by the Examiner and is believed to place the application in condition for allowance. Favorable reconsideration and allowance of this application is respectfully requested. Applicants respectfully request reconsideration and withdrawal of the Examiner's rejections in view of the foregoing amendments and following remarks.

Examiner Interview

An interview was conducted with examiner Thomas Dailey, inventor Richard Dean and attorney for applicant Chad Walter, on February 17, 2009. The interview occurred via telephone and focused on proposed amendments and the Hohenacker reference. Applicants explained how the Hohenacker reference fails to disclose a video preview feature. The Examiner explained his position that the broadest reading of the claim only required a playback, not necessarily a video playback. No agreements were reached in the interview.

Claim Rejections - 35 USC §102

Claims 1-3, 5-6, 8-9, 13, 16, 51-54, 57, and 59-60, are rejected under 35 U.S.C. §102(b) as being anticipated by Hohenacker (WIPO Pub. No. WO/2002/080519 A2), hereafter "Hohenacker."

The Examiner states:

> As to claim 1, Hohenacker discloses an interactive personal service provider for video communication having a studio (Abstract) comprising: an audio and video recorder to record at least one performance thereby making a recorded performance (Fig. 1, label 30 (audio recorder) and label 39 (video recorder) and [0073]-[0074]); at least one computer server for storing said recorded performance (Fig. 1, label 31 and [0063]) further comprising: an audio and video player to preview said recorded performance ([0091] and [0078]-[0079]); and a database to receive input information from a studio user that relates to said recorded performance ([0083]); and a communication connection to transmit said recorded performance to a studio site maintained by a studio operator ([0040]-[0041], recording centre reads on a studio site) wherein said recorded performance is categorized and wherein said site enable a plurality of viewers to view said recorded performance ([0043]-[0045]).
>
> As to claim 51, Hohenacker discloses an apparatus for distributing information to at least one information seeker said apparatus comprising: at least two studio booths ([0001]) wherein each studio booth is equipped with an audio and video recording device (Fig. 1, label 30 (audio recorder)

> and label 39 (video recorder) and [0073]-[0074]) and is located in a publicly accessible location ([0005]); and a studio site connected to each said studio booth wherein a plurality of studio users can access one of the plurality of said studio booths to upload a performance ([0040]-[0041], recording centre reads on a studio site).

Response: Independent Claims 1 and 51 each have the limitation of "an audio and video player to preview said recorded performance." The Examiner alleged that such limitation is "an intended use limitation." The Examiner further indicates that

> A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim" See, e.g, In re Screiber, 128 F.3d 1473, 1477 (Fed. Cir. 1997).
>
> In this case Hohenacker discloses audio and video players [0091], a video player; and [0078-0079] discloses an audio player capable of performing the intended use, i.e. previewing the recorded performance, there is not a structural difference between the claimed invention (i.e., the claimed invnetion's structure is simply the audio and video players), Hohenacker mees the claim.

Applicants respectfully disagree.

Schrieber was a patent application having a claim directed toward a dispensing top having a specific conical shape for dispensing popcorn. The application was anticipated by a reference disclosing the same conical shape, but was for dispensing lubricating oil. Thus, the board found that all the limitations were inherently disclosed by Harz and that the recitation of a new intended use for an old product does not make a claim to that old product patentable. Such is not the case here.

Hohenacker fails to disclose a limitation that can provide an audio playback feature. Consequently, the Hohenacker structure, unlike Schrieber, is not capable of providing an audio

and video preview of the performance. The Examiner indicates that paragraphs 91 and 78-79 of Hohenacker disclose such limitation. Those paragraphs are copied below:

> [0078] The communication between the called camera system 2 and both blocked and accepted users 15 takes place through the speech computer 25 of the recording unit 31. If the recording centre 17 is used, then a person working as a studio manager, a host or as a director in the recording centre 17 can also talk to the user 15.
>
> [0079] The user 15 can, for example, thus be informed that he has the opportunity of a presentation, for example, to sing a song, to answer quiz questions, to introduce himself in the framework of a singles show or to take part in a poll and will thereby be recorded by a camera 39. In the case of recruitment, casting or poll activities, the user 15 can be advised of what is expected of him within the framework of the respective activity.
>
> [0091] The recording unit 31 can be fitted with a preview function which makes it possible at least for authorised persons to view the stored video data comparatively fast with reduced image quality from any desired location.

Paragraphs 78 and 79 reference a recording centre 17, but no playback feature. In fact, the recording centre 17 appears to refer to the location of a studio manager or host. Paragraph 91 discloses viewing stored video data, but no audio. In fact, as mentioned in the office action response, Paragraph 91 of the Hohenacker reference (US 2005/0100311) discloses a recording unit that can be fitted with a preview function that makes it possible for after hours persons to view stored video data, comparatively fast with reduced image quality. The Hohenacker reference is very specific that the preview is not only lacking sound, but also has a "reduced image quality." The fact that the preview is "comparatively fast" further suggests it is without sound. Further, at paragraph 43, the Hohenacker reference teaches that the video data can be subjected to "later processing" and can be "put together" or synchronized with picked up audio data. Again this strongly suggests and even teaches away from placement of an on-site audio player and immediate previewing of the performance. Consequently, the Hohenacker

reference clearly fails to teach or disclose the structure of an audio player, which is a claimed limitation of the present invention.

During the interview conducted with the Examiner, the Examiner indicated that the claims as written fail to indicate that both the audio and video are previewed and thus indicated that the Hohenacker rejection was still valid.

During patent examination the pending claims must be interpreted as broadly as their terms reasonably allow. *In re Zletz*, 893 F.2d 319, 321 (Fed. Cir. 1989). When the applicant states the meaning that the claim terms are intended to have, the claims are examined with that meaning, in order to achieve a complete exploration of the applicant's invention and its relation to the prior art. *Id.* (emphasis added). The reason is simply that during patent prosecution when claims can be amended, ambiguities should be recognized, scope and breadth of language explored, and clarification imposed. *Id.* (citing *Burlington Industries, Inc. v. Quigg*, 822 F.2d 1581, 1583, 3 U.S.P.Q.2D (BNA) 1436, 1438 (Fed.Cir. 1987); *In re Yamamoto*, 740 F.2d 1569, 1571, 222 U.S.P.Q. (BNA) 934, 936 (Fed.Cir. 1984)) (emphasis added). The Applicants, in an attempt to clarify any potential ambiguity, hereby assert that the claimed phrase 'an audio and video player to preview said recorded performance' is directed towards a device that plays back both the audio and the video that was recorded as supported at for example at paragraph 61 of the instant published patent application which reads in part, ". . . when the performance is completed, the performer can preview his or her performance and decide whether to upload the performance to the website or to purchase another take and re-record his or her performance." In view of this disclosure Applicants submit that one having ordinary skill in the art would interpret the claim to cover a player that plays both the audio and video portion of the recorded

performance. Consequently, in view of the above, Applicants respectfully request that the rejection in view of Hohenacker be withdrawn.

The Examiner has indicated:

> As to claims 2 and 57, Hohenacker discloses said studio operator can query said database for criteria specified by an information seeker ([0029]-[0030]).

Response: All limitations of the claimed invention must be considered when determining patentability. *In re Lowry*, 32 F.3d 1579, 1582, 32 U.S.P.Q.2d 1031, 1034 (Fed. Cir. 1994). The paragraphs cited by the Examiner merely indicates that information can be solicited to store in a database. There is no categorization of the data disclosed in the prior art that would permit an information seeker to query the database for a specific category in the way described, for example, in paragraph [0036] of the instant published patent application.

The Examiner has indicated:

> As to claim 5, Hohenacker discloses a professional media kit is produced from said input information and said recorded performance ([0046]).

Response: Applicants respectfully disagree that the cited portion of the cited reference teaches, suggests or discloses the claims limitation of "a professional media kit." Rather, the portion cited by the Examiner at best describes a mini-series.

The Examiner has indicated:

> As to claim 6, Hohenacker discloses an information seeker can query said input information ([0029]-[0030]).

Response: All limitations of the claimed invention must be considered when determining patentability. *In re Lowry*, 32 F.3d 1579, 1582, 32 U.S.P.Q.2d 1031, 1034 (Fed. Cir. 1994). The paragraphs cited by the Examiner merely indicates that information can be

solicited to store in a database. There is no categorization of the data disclosed in the prior artthat would permit an information seeker to query the database for a specific category in the way described, for example, in paragraph [0036] of the instant published patent application.

The Examiner has indicated:

> As to claim 8, Hohenacker discloses said recorded performance is reviewed by a personal coach ([0026]).

Response: Hohenacker describes a "speech computer" to tell a user for example, where to find the hidden camera. See paragraph [0027] of Hohenacker. Such is nothing like the personal coach described in paragraph [0035] of the instant application in which a personal coach reviews the recorded performance and offers tips.

The Examiner has indicated:

> As to claim 9, Hohenacker discloses said recorded performance comprises a Karaoke-style performance performed in said studio ([0079]).

Response: Hohenacker fails to teach or suggest the use of a Karaoke-style database to make a performance. Rather, the cited portion of Hohenacker discloses only audio features so Hohenacker fails to disclose displaying words to songs. In short, Hohenacker fails to disclose anyway for a user to select a song from a database or view lyrics.

The Examiner has indicated:

> As to claims 16 and 60, Hohenacker discloses a video conferencing capability ([0079]).

Response: Applicants vigorously disagree that the cited portion of Hohenacker discloses a video conferencing capability. It is well settled that prior art under 35 U.S.C. § 102(b) must sufficiently describe the claimed invention to have placed the public in possession

of it. *Elan Pharms., Inc. v. Mayo Found.*, 346 F.3d 1051, 1055 (Fed. Cir. 2003) (citing *In re Donohue*, 766 F.2d 531 (Fed. Cir. 1985)). Such possession is effected if one of ordinary skill in the art could have combined the publication's description of the invention with his own knowledge to make the claimed invention. *Id.* Accordingly, even if the claimed invention is disclosed in a printed publication, that disclosure will not suffice as prior art if it is not enabling. *Id.* The knowledge supposed to be derived from the publication must be sufficient to enable those skilled in the art or science to understand the nature and operation of the invention, and to carry it into practical use. *In re Le Grice*, 301 F.2d 929, 936 (CCPA 1962) (emphasis added). The test which determines whether an invention has been anticipated by a reference is whether the description of the invention in the reference is sufficient to put the public in possession of the invention. *In re Le Grice*, 301 F.2d 929, 933 (CCPA 1962). A prior art publication must contain within its four corners a sufficient description to enable such a person to make the invention without an unreasonable amount of experimentation. *Advanced Display Sys. v. Kent State Univ.*, 212 F.3d 1272, 1282 (Fed. Cir. 2000) ("invalidity by anticipation requires that the four corners of a single, prior art document describe every element of the claimed invention, either expressly or inherently, such that a person of ordinary skill in the art could practice the invention without undue experimentation."). There is no screen in Hohenacker except for the display device 23 which is vaguely disclosed in paragraph [0015] of Hohenacker as "a placard, a poster or a monitor." Rather, paragraph [0079] of Hohenacker stands for the proposition of a phone being utilized to talk to a user. Hohenacker fails to disclose a videoconferencing capability.

Claim Rejections - 35 USC §103

Claims 20-23, 26-27, 30-31, and 34 are rejected under 35 U.S.C. §103(a) as being unpatentable over Hohenacker in view of Williams (US Pub. No. 2002/0091455).

The Examiner states:

> As to claim 20, Hohenacker discloses a method for placing a performance of a studio user on a studio site, said method comprising the steps of:
>
> a. providing a studio in a public locations ([0005]) wherein said studio comprises an audio and video recording capability (Fig. 1, label 30 (audio
> recorder) and label 39 (video recorder) and [0073]-[0074]);
>
> b. recording a performance of a studio user in said studio onto a studio server thereby creating a recorded performance ([0063]);
>
> c. categorizing said recorded performance by subject matter in a database ([0079], different types of video recordings can be made and [0093] discloses how different types of recorded materials are handled differently, i.e. they are inherently categorized); and
>
> d. making said recorded performance accessible from a studio site maintained by a studio operator ([0040]-[0041], recording centre reads on a studio site).
>
> But, Hohenacker does not explicitly disclose the studio user categorizes said recorded performance.
>
> However, Williams discloses a user recording content and further the user categorizes said content ([0048], user selects the type of recording and [0051], lines 1-9 discloses the storing of the various files by category or file type in the database, the file type being dependent on selections made by the recording user).
>
> Therefore it would have been obvious at the time of the invention to combine the teachings of Hohenacker and Williams in order to allow user control of the categorization of recorded content and in doing so providing for a more user friendly experience.

Response: Applicants believe Claim 20, as amended, is unobvious in view of the cited references because the references alone or in combination fail to automatically provide instructions to a user based upon a selected category, as explained in paragraph [0051] of

the instant patent application. The references fail to teach or suggest making a performance available via streaming servers.

Further in response to Examiner's contention that the recorded materials in Hohenacker are "inherently categorized", Applicants disagree because paragraph [0093] of Hohenacker fails to indicate that different performance categories are handled differently. Rather, Hohenacker merely teaches placing information into a database.

The Examiner has indicated:

> As to claim 21, Hohenacker discloses said studio operator can query said database for criteria specified by an information seeker ([0029]-[0030]).

Response: All limitations of the claimed invention must be considered when determining patentability. *In re Lowry*, 32 F.3d 1579, 1582, 32 U.S.P.Q.2d 1031, 1034 (Fed. Cir. 1994). The paragraphs cited by the Examiner merely indicates that information can be solicited to store in a database. There is no categorization of the data disclosed in the prior artthat would permit an information seeker to query the database for a specific category in the way described, for example, in paragraph [0036] of the instant published patent application.

The Examiner has indicated:

> As to claim 22, Hohenacker discloses information is input by said studio user prior to making said recorded performance accessible at step d ([0030]).

Response: Applicants submit that Claim 22, as amended and supported at paragraph [0044] of the instant patent application is not disclosed in the cited references.

The Examiner has indicated:

> As to claim 23, Hohenacker discloses a professional media kit is produced from said input information and said recorded performance ([0046]).

Response: Applicants respectfully disagree that the cited portion of the cited reference teaches, suggests or discloses the claims limitation of "a professional media kit." Rather, the portion cited by the Examiner at best describes a mini-series.

The Examiner has indicated:

> As to claim 26, Hohenacker discloses said recorded performance is reviewed by a personal coach ([0026]).

Response: Hohenacker describes a "speech computer" to tell a user for example, where to find the hidden camera. See paragraph [0027] of Hohenacker. Such is nothing like the personal coach described in paragraph [0035] of the instant application in which a personal coach reviews the recorded performance and offers tips.

The Examiner has indicated:

> As to claims 27, Hohenacker discloses said recorded performance comprises a Karaoke-style performance performed in said studio ([0079]).

Response: Hohenacker fails to teach or suggest the use of a Karaoke-style database to make a performance. Rather, the cited portion of Hohenacker discloses only audio features so Hohenacker fails to disclose displaying words to songs. In short, Hohenacker fails to disclose anyway for a user to select a song from a database or view lyrics.

The Examiner has indicated:

> As to claim 30, Hohenacker discloses said studio user agrees to an exclusive agency contract with a studio operator prior to step b ([0081]).

Response: Regarding Claim 30, the limitation of "an exclusive agency" is not found in Hohenacker. Rather, paragraph [0081] of Hohenacker discloses that the user consent to being recorded, but fails to teach or suggest the agency of future recordings that would be

encompassed by an "exclusive" agency agreement. Rather, Hohenacker is focused on the satisfaction of "any existing legal requirements or provisions."

The Examiner has indicated:

> As to claim 34, Hohenacker discloses said recorded performance comprises at least two studio users in at least two separate locations ([0001]).

Response: Applicants believe that Claim 34 as amended is not disclosed or suggested by the prior art references because Hohenacker clearly fails to disclose an enabled video conferencing device.

Claims 38-40, 43-47 and 49 are rejected under 35 U.S.C. §103(a) as being unpatentable over Hohenacker in view of Chu et al. (US Pat. 6,086,380), hereafter "Chu."

The Examiner states:

> As to claim 38, Hohenacker discloses a method of recruiting talent comprising:
>
> a. providing an enclosed studio in a public place for at least one studio user to record a performance ([0005]);
>
> b. recording said performance in said studio on a studio server thereby making a recorded performance ([0063]);
>
> c. transmitting said recorded performance to an information seeker ([0040]-[0041]).
>
> But, Hohenacker does not explicitly disclose the studio is both enclosed and in a public place, which provides for a private recorded performance.
>
> However, Chu discloses a recording studio that is both enclosed and in a public place, which provides for a private recorded performance (Fig. 1 and column 2, lines 39-48).
>
> Therefore it would have been obvious at the time of the invention to combine the teachings of Hohenacker and Chu in order to provide for privacy when giving a recorded performance thus improving the overall user experience.

Response: Regarding Claim 38 Hohenacker and Chu alone or in combination fail to teach or suggest the limitation of automatically providing instructions to the studio user for making a recorded performance based upon the registered category as explained for example, in paragraph [0051] of the instant patent application.

The Examiner has indicated:

> As to claim 40, Hohenacker discloses a talent seeker may access said demographic information ([0030]).

Response: All limitations of the claimed invention must be considered when determining patentability. *In re Lowry*, 32 F.3d 1579, 1582, 32 U.S.P.Q.2d 1031, 1034 (Fed. Cir. 1994). The paragraphs cited by the Examiner merely indicates that information can be solicited to store in a database. There is no categorization of the data disclosed in the prior artthat would permit an information seeker to query the database for a specific category in the way described, for example, in paragraph [0036] of the instant published patent application.

The Examiner has indicated:

> As to claim 44, Hohenacker discloses a professional media kit is produced from said input information and said recorded performance ([0046]).

Response: Applicants respectfully disagree that the cited portion of the cited reference teaches, suggests or discloses the claims limitation of "a professional media kit." Rather, the portion cited by the Examiner at best describes a mini-series.

The Examiner has indicated:

> As to claim 45, Hohenacker discloses said recorded performance is reviewed by a personal coach ([0026]).

Response: Hohenacker describes a "speech computer" to tell a user for example, where to find the hidden camera. See paragraph [0027] of Hohenacker. Such is nothing like the personal coach described in paragraph [0035] of the instant application in which a personal coach reviews the recorded performance and offers tips.

The Examiner has indicated:

> As to claim 46, Hohenacker discloses said recorded performance comprises a Karaoke-style performance performed in said studio ([0079]).

Response: Hohenacker fails to teach or suggest the use of a Karaoke-style database to make a performance. Rather, the cited portion of Hohenacker discloses only audio features so Hohenacker fails to disclose displaying words to songs. In short, Hohenacker fails to disclose anyway for a user to select a song from a database or view lyrics.

Claims 4, 7,12,14-15,17-19,55-56, and 58 are rejected under 35 U.S.C. §103(a) as being unpatentable over Hohenacker as applied to claims 1 and 51, in view of Chacker (US Pat. 6,578,008).

The Examiner states:

> As to claims 4 and 58, Hohenacker does not disclose a viewer purchases said recorded performance from a studio operator.
>
> However, Chacker discloses a view purchasing an uploaded recorded performance from a studio operator (column 6, lines 63-65 and column 12, lines 48-53).
>
> Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Hohenacker and Chacker in order for the studio to use the acquired recorded performances to earn a profit.
>
> As to claim 7, Hohenacker does not disclose at least one information seeker bids to enter into contract negotiations with said studio user.

> However, Chacker discloses an information seeker bids to enter into contract negotiations with an uploading artist (column 7, lines 8-25).
>
> Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Hohenacker and Chacker in order recruit talent (Chacker, column 4, lines 23-26).

Response: Chacker fails to teach or suggest the claims limitation bidding to enter into contract negotiations. Rather, Chacker teaches it will merely award and implement a contract.

The Examiner has indicated:

> As to claim 12, Hohenacker does not disclose said studio user electronically contracts with said studio operator for an exclusive agency contract for said recorded performance.
>
> However, Chacker discloses an uploading artist electronically contracts with a studio operator for an exclusive agency contract for an uploaded performance (column 7, lines 8-25).
>
> Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Hohenacker and Chacker in order to recruit talent (Chacker, column 4, lines 23-26).

Response: Regarding Claim 12, Chacker fails to teach or suggest the limitation of wherein a "studio user electronically contract" with a studio operator. Rather, Chacker merely indicates that popular artists will be awarded contract, but fails to state how. A fair reading of Chacker is that there is no electronic contracting or by selected, "popular" artists are approached at a later date to be awarded some sort of "contact."

> As to claim 15, Hohenacker does not disclose a menu on said studio site allows user created categories and sub-categories.
>
> However, Chacker discloses a menu on a studio site allows user created categories and sub-categories (column 10, lines 30-35).

> Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Hohenacker and Chacker in order to create a user friendly interface by making the recorded performances more accessible.

Response: The cited portion of Chacker fails to disclose a user-created category. Rather, the categories are set and span served specified, but not user created categories. Rather the genres and categories are specifically listed by Chacker. Chacker fails to permit a user to create a genre not listed, e.g. a user-created genre.

The Examiner has indicated:

> As to claims 17 and 56, Hohenacker does not disclose said site further comprises a ratings means for enabling a viewer to rate said recorded performance wherein further said ratings means prohibits said viewer from rating said recorded performance more than once.
>
> However, Chacker discloses a ratings means for enabling a viewer to rate a recorded performance and preventing said viewer from compromising the ratings (column 7, lines 19-25, viewers trade stocks, effectively rating artists; viewers are giving a finite amount of resources to trade with).
>
> Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Hohenacker and Chacker in order to allow direct user input which can then translate into popularity and marketing potential of prospective artists.

Response: Regarding Claim 17, Applicants respectfully submit that Chacker fails to disclose the limitation wherein "said ratings means prohibits said viewer from rating said recorded performance more than once." The fact that a viewer can rate "with a finite amount of stock" as Examiner explains actually illustrates a single viewer can exercise disproportionate influence by "buying" additional stock which equates to additional votes. Chacker fails to require stockholders to hold a variety of stock and fails to limit the percentage of "stock" that can be in a single holding.

The Examiner has indicated:

> As to claim 18, Hohenacker and Chacker disclose the invention substantially with regard to the parent claim 17, and further disclose an information seeker is electronically notified when ratings from one or more viewers exceeds a predetermined ratings threshold (Chacker, column 13, lines 23-28).

Response: Regarding Claim 18, Applicants point out that Chacker disclosed the top 5 artists, whereas Claim 18 is directed toward ensuring "viewers" do not give consistently high or low ratings.

The Examiner has indicated:

> As to claim 19, Hohenacker and Chacker disclose the invention substantially with regard to the parent claim 18, and further disclose a studio operator is electronically notified when ratings from said viewers exceeds a predetermined ratings threshold (Chacker, column 13, lines 23-28).

Response: Chacker teaches a continuous placement rating whereby the material is apparently rated in the order of its stock price. The present invention, on the other hand, is triggered when a certain threshold is reached thereby permitting a volume and average combination to be specified. Consequently, different information seekers with different criteria can select their own customized threshold unlike Chacker, as exampled by the discussion in paragraph [0066] of the instant patent application.

Claims 24-25, 32-33, and 35-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hohenacker in view of Williams as applied to claim 20, and in further view of Chacker (US Pat. 6,578,008).

The Examiner states:

> As to claim 24 Hohenacker does not disclose a viewer purchases said recorded performance from a studio operator.

However, Chacker discloses a view purchasing an uploaded recorded performance from a studio operator (column 6, lines 63-65 and column 12, lines 48-53).

Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Hohenacker, Williams, and Chacker in order for the studio to use the acquired recorded performances to earn a profit.

As to claim 25, Hohenacker does not disclose at least one information seeker bids to enter into contract negotiations with said studio user.

However, Chacker discloses an information seeker bids to enter into contract negotiations with an uploading artist (column 7, lines 8-25).

Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Hohenacker, Williams in order recruit talent (Chacker, column 4, lines 23-26).

Response: Chacker fails to teach or suggest the claims limitation bidding to enter into contract negotiations. Rather, Chacker teaches it will merely award and implement a contract.

The Examiner has indicated:

As to claim 33, Hohenacker does not disclose a menu on said studio site allows user created categories and sub-categories.

However, Chacker discloses a menu on a studio site allows user created categories and sub-categories (column 10, lines 30-35).

Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Hohenacker, Williams and Chacker in order to create a user friendly interface by making the recorded performances more accessible.

Response: The cited portion of Chacker fails to disclose a user-created category. Rather, the categories are set and span served specified, but not user created categories.

Rather the genres and categories are specifically listed by Chacker. Chacker fails to permit a user to create a genre not listed, e.g. a user-created genre.

The Examiner has indicated:

> As to claim 35, Hohenacker does not disclose said site further comprises a ratings means for enabling a viewer to rate said recorded performance wherein further said ratings means prohibits said viewer from rating said recorded performance more than once.
>
> However, Chacker discloses a ratings means for enabling a viewer to rate a recorded performance and preventing said viewer from compromising the ratings (column 7, lines 19-25, viewers trade stocks, effectively rating artists; viewers are giving a finite amount of resources to trade with).
>
> Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Hohenacker, Williams, and Chacker in order to allow direct user input which can then translate into popularity and marketing potential of prospective artists.

Response: Regarding Claim 17, Applicants respectfully submit that Chacker fails to disclose the limitation wherein "said ratings means prohibits said viewer from rating said recorded performance more than once." The fact that a viewer can rate "with a finite amount of stock" as Examiner explains actually illustrates a single viewer can exercise disproportionate influence by "buying" additional stock which equates to additional votes. Chacker fails to require stockholders to hold a variety of stock and fails to limit the percentage of "stock" that can be in a single holding.

The Examiner has indicated:

> As to claims 36, Hohenacker, Williams and Chacker disclose the invention substantially with regard to the parent claim, and further disclose an information seeker is electronically notified when ratings from one or more viewers exceeds a pre-determined ratings threshold (Chacker, column 13, lines 23-28).

Response: Chacker teaches a continuous placement rating whereby the material is apparently rated in the order of its stock price. The present invention, on the other hand, is triggered when a certain threshold is reached thereby permitting a volume and average combination to be specified. Consequently, different information seekers with different criteria can select their own customized threshold unlike Chacker, as exampled by the discussion in paragraph [0066] of the instant patent application.

The Examiner has indicated:

> As to claims 37, Hohenacker, Williams and Chacker disclose the invention substantially with regard to the parent claim, and further disclose a studio operator is electronically notified when ratings from said viewers exceeds a predetermined ratings threshold (Chacker, column 13, lines 23-28).

Response: Chacker teaches a continuous placement rating whereby the material is apparently rated in the order of its stock price. The present invention, on the other hand, is triggered when a certain threshold is reached thereby permitting a volume and average combination to be specified. Consequently, different information seekers with different criteria can select their own customized threshold unlike Chacker, as exampled by the discussion in paragraph [0066] of the instant patent application.

Claims 28-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hohenacker and Williams, as applied to claims 20, in further view of what is well known in the art.

The Examiner states:

> As to claim 28, Hohenacker and Williams do not disclose said studio is substantially soundproof.
>
> However, it is well known practice to one of ordinary skill in the art to make recording studio's substantially soundproof. Therefore, Official

> Notice (see MPEP 2144.03) is taken that practice was well known in the art and is implemented to gain the advantage of higher quality audio recordings (i.e. less background noise) by using substantially soundproof recording studios.
>
> The examiner further cites Chu et al (US Pat. 6,086,380) which evidences this assertion (Fig. 1, and column 2, lines 39-48).

Response: Applicants have amended Claim 28. Consequently, the rejection is believed to be moot in view of the amendment.

The Examiner has indicated:

> As to claim 29, Hohenacker and Williams do not disclose said audio and video recorder enables said studio user to transmit only one recording from at least two performances recorded by said studio user in said studio.
>
> However, allowing a user to make multiple recordings and uploading only one of those recording to a remote site would have been an obvious modification to one of ordinary skill in the art given the teachings of Hohenacker. Specifically, it is a common practice in the art to review, and if necessary rerecord poor performances, and only utilize one of the recordings. Therefore, Official Notice (see MPEP 2144.03) is taken that practice was well known in the art and is implemented in order allow the user to make errors and correct those errors.

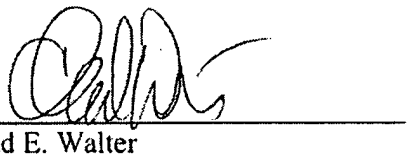
Response: Claim 29 depends upon Claim 20, which claims automated system. Consequently, the automated features are implicit in Claim 29. Applicants respectfully request Examiner provide an example of an automated review to support the rejection.

CONCLUSION

It is respectfully urged that the subject application is patentable over the references cited by Examiner and is now in condition for allowance. Applicants request consideration of the application and allowance of the claims. If there are any outstanding issues that the Examiner feels may be resolved by way of a telephone conference, the Examiner is cordially invited to contact Chad E. Walter or Vincent J. Allen at 972-367-2001.

The Commissioner is hereby authorized to charge any additional payments that may be due for additional claims to Deposit Account 50-0392.

Respectfully submitted,

By: 

Chad E. Walter
Registration No. 54,625
Attorney for Applicants

Date: April 21, 2009

CARSTENS & CAHOON, LLP
P.O. Box 802334
Dallas, TX 75380
(972) 367-2001 Telephone
(972) 367-2002 Facsimile